

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 20-CV-954

FARHAD AZIMA,

Plaintiff,

v.

NICHOLAS DEL ROSSO and VITAL
MANAGEMENT SERVICES, INC.,

Defendants.

**PLAINTIFF'S OPPOSITION TO
THE MOTIONS OF DECHERT
LLP FOR LEAVE TO FILE
MOTIONS TO QUASH
SUBPOENA SERVED ON HSBC
BANK USA, N.A.
[ECF NOS. 238 AND 239]**

Dechert LLP (“Dechert”) once again seeks to obstruct discovery in this case by filing two baseless motions to quash a single third-party subpoena* for relevant bank records (the “HSBC Subpoena”). *See* ECF Nos. 238, 239. Dechert concedes that “some discovery in response to the HSBC Subpoena may become appropriate,” Mot. at 3 (ECF No. 238), yet it takes the heavy-handed approach to thwart the production of *all* documents from HSBC. Dechert’s efforts are belied by the fact that the subpoena recipient itself, HSBC, has not objected to the documents Plaintiff seeks on any grounds and has agreed to produce documents forthwith. Clearly, HSBC recognizes that it possesses relevant documents, and that producing them

* There is only one HSBC Subpoena. In fact, HSBC requested that Plaintiff revise the subpoena issued to it to include more information to assist the bank in identifying relevant transactions for production. Plaintiff then served an amended subpoena in place of the original one.

would not be overly burdensome or disproportionate to the needs of the case as Dechert argues. *Id.*

Fact discovery ends in less than two weeks, and Plaintiff cannot simply sit back and wait to serve discovery while the clock winds down. Defendants and their co-conspirator, Dechert, have engaged in a concerted effort to block *all* documents from Plaintiff that would shed light on their criminal conduct to hack and steal Plaintiff's trade secrets, including by failing to produce *any* of their own documents responsive to Plaintiff's requests, *see* ECF No. 148 at 2, and by seeking to prevent other third-party subpoena respondents from turning over relevant discovery. Dechert cannot use the discovery disputes currently before this Court as an excuse to prevent third parties from upholding their independent subpoena obligations, as HSBC is in the process of doing here.

Finally, Dechert's argument that the attorney-client privilege shields HSBC banking records is frivolous and without merit. Plaintiff does not seek attorney-client communications; Plaintiff seeks financial records prepared by a bank. These records are not privileged as to HSBC, nor do they implicate any privileged information held by Dechert. Fourth Circuit courts have repeatedly ruled that the privilege does not extend to the bank records sought here. *See Lesh v. United States*, 715 F. Supp. 1333, 1335 (E.D. Va. 1989) ("The fact that bank records derive from transactions involving an attorney's client trust

account does not cloak those records with any special protection. To hold otherwise would give individuals the opportunity to use the attorney-client privilege for the impermissible purpose of masking fraud.”) (citation omitted); *RBC Bank (USA) v. Epps*, No. 4:11-cv-0124, 2012 WL 486626, at *2 (D.S.C. Feb. 14, 2012) (denying defendant attorney’s motion to quash production of attorney banking records); *see also SAS Inst. Inc. v. Akin Gump Strauss Hauer & Feld, LLP*, No. 5:10-CV-101, 2011 WL 6370482, at *6 (E.D.N.C. Dec. 20, 2011) (“As a general matter, the attorney-client privilege does not extend to billing records and expense reports.”) (cleaned up).

Dechert’s requests to file motions to quash are yet more thinly veiled attempts to impede discovery that Dechert admits may be relevant, to pressure third parties into refusing to comply with their subpoena obligations, and to waste limited judicial resources. Accordingly, this Court should deny Dechert’s leave to file motions to quash the HSBC Subpoena.

This, the 22nd day of June, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of this Notice to the following attorneys:

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This, the 22nd day of June, 2023.

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